

DOCUMENT RESUME

02044 - [A152024]

[Affirmative Determinations of Responsibility and Determination of Small Business Size Status]. B-188631. April 8, 1977. 2 pp.

Decision re: Dillon Lumber Co., Inc.; by Paul G. Denbling, General Counsel.

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law II.

Budget Function: National Defense: Department of Defense - Procurement & Contracts (058).

Organization Concerned: Department of the Army: Corps of Engineers; Martin Explosives Corp.

Authority: 15 U.S.C. 637(b)(6). B-188006 (1976). B-187517 (1976). B-186956 (1977). B-186672 (1976).

Award of a U.S. Army Corps of Engineers contract for clearing forest land and marketing the timber was contested on the basis that the awardee's bid was nonresponsive and that the awardee's size status as a small business was questionable. GAO does not review determinations of responsibility except in cases alleging fraud, nor does it determine size status. (RHS)

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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

H. H. Ford
Proc
II

FILE: B-188631

DATE: April 8, 1977

MATTER OF: Dillon Lumber Co., Inc.

DIGEST:

1. GAO does not review affirmative determinations of responsibility save for a showing of fraud on part of procuring officials or other circumstances not applicable here.
2. Protester's contention that low bidder is non-responsive because it has utilized protester's proprietary data relates to dispute between two private parties as to which court action rather than protest to this Office is appropriate remedy.
3. SBA has conclusive authority to determine size status of small business concerns for procurement purposes and GAO does not review such questions.
4. To extent protest concerns prime contractor's choice of subcontractor, matter is not for consideration by GAO except in circumstances not present here.

Dillon Lumber Company, Inc. (Dillon) protests the award to Martin Explosives Corporation (Martin) of a contract by the U.S. Army Corps of Engineers under solicitation No. DACW27-77-B-0017. Dillon states that the contract involves clearing some 2,600 acres of forest land and marketing the timber. According to Dillon, it conducted a land use survey and cost analysis and furnished Martin with a cash flow statement in order to enable Martin to prepare and submit a bid on this solicitation. Martin, the low bidder, has informed Dillon that it does not intend to employ Dillon as a subcontractor on this contract.

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Dillon argues that Martin's bid is nonresponsive and that Martin is a nonresponsible offeror because of Martin's use of Dillon's proprietary data when preparing its bid. As explained below, we must dismiss Dillon's protest.

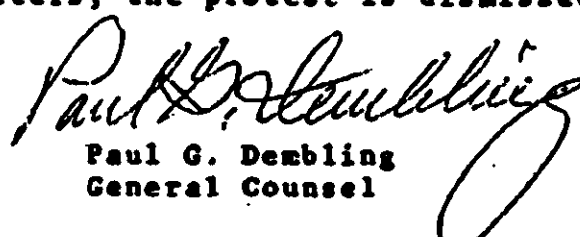
The record is not clear whether a determination of Martin's responsibility has been made at this time. However, this Office does not review affirmative determinations of responsibility save for a showing of fraud on the part of procuring officials or other circumstances not applicable to this case. Polarad Electronics Corporation, B-187517, November 9, 1976, 76-2 CPD 396. Thus, this portion of Dillon's argument is not for our consideration in any case.

Dillon's responsiveness argument essentially relates to a dispute between two private parties regarding proprietary rights as to which court action rather than a protest to this Office is the appropriate remedy. York Industries, Inc.--request for reconsideration, B-186958, January 10, 1977, 77-1 CPD 17.

Dillon also questions Martin's eligibility as a small business concern for this solicitation. Under 15 U.S.C. § 637(b)(6)(1970), the Small Business Administration has been granted conclusive authority to determine the size status of small business concerns for procurement purposes. Therefore, our Office does not review such questions. See, e.g., Maecon, Inc., B-188006, December 30, 1976, 76-2 CPD 542.

Finally, to the extent that Dillon is protesting Martin's choice of another subcontractor, this Office generally does not consider protests concerning awards of subcontracts by prime contractors, except in circumstances not applicable to this case. Control Data Corporation, B-186672, December 15, 1976, 76-2 CPD 492, and cases cited therein.

Since no useful purpose would be served by further consideration of these matters, the protest is dismissed.


Paul G. Dembling
General Counsel